Canadian Environmental Assessment Agency
Agence canadienne d'évaluation environnementale

The Canadian Environmental Assessment Act

Reference Guide on the Federal Coordination Regulations

July 1997

Canada

A Reference Guide

for the

Canadian Environmental

Assessment Act

The Federal Coordination Regulations

Prepared by

Barramax Policy Consulting

For

The Canadian Environmental Assessment Agency

July 1997

Final Draft

An invitation to Users of the
Reference Guide on the Federal Coordination Regulations

The Canadian Environmental Assessment Agency views this guide as a working document. It will be updated in response to users' comments and needs as they gain experience with the Regulations. The Agency welcomes comments and suggestions from readers. These should be addressed to:

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This reference guide is intended for information purposes only. It should not be perceived as a substitute for the *Canadian Environmental Assessment Act*, or the *Federal Coordination Regulations*. In the event of any inconsistency between this guide and the Act or Regulations, the latter would prevail. Individuals with specific legal questions are urged to seek legal advice.

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Introduction

This reference guide provides guidance on the *Federal Coordination Regulations* (Regulations) pursuant to the *Canadian Environmental Assessment Act* ("the Act"). The Regulations came into force April 8, 1997, and apply to environmental assessments (EAs) under the Act of projects that take place inside of Canada.

Under the Act, each federal authority (federal department or agency) is responsible for determining the environmental implications of certain projects by ensuring an EA is conducted. The Act, as amended, includes in its purpose *to ensure that responsible authorities carry out their responsibilities in a coordinated manner with a view to eliminating unnecessary duplication in the environmental assessment process*. The Regulations are intended to coordinate federal authorities' activities regarding an EA.

The goals of the *Regulations* are to ensure that the federal EA process is timely and predictable, and to ensure as far as possible that there is only one federal EA carried out for a project.

The key elements of the Regulations are:

- identification and notification of federal authorities that may be involved in a project as responsible authorities (RAs) or as expert federal authorities according to timelines;
- consultation among federal authorities regarding the scope of the EA for the project;
- coordination of the time schedule for the EA determinations of RAs;
- coordination of all RAs' interests and involvement in comprehensive study recommendations.

The *Regulations* will support efforts to harmonize the federal EA process with provincial EA processes by ensuring that federal EA requirements are clear soon after a project description is received by the federal government.

Part I The reference guide is organized in two parts provides guidance on proponents' role in ensuring effective coordination of federal EA requirements.

Part II provides guidance for EA practitioners in the federal government who are responsible for implementing the Regulations. Each section of the Regulations is explained which provides an excerpt of the Regulations, describes the application of that part of the Regulations, and outlines the procedure required.

This reference guide focuses exclusively on the aspects of the federal EA process that relate to the *Regulations*. Figure 1 is a general flowchart of the Regulations. For a complete guide to the federal EA process, please consult *The Responsible Authority's Guide* and its associated reference guides, available from:

Canadian Environmental Assessment Agency
14th Floor, Fontaine Building
200 Sacre-Coeur Boulevard
Hull, Quebec K1A 0H3

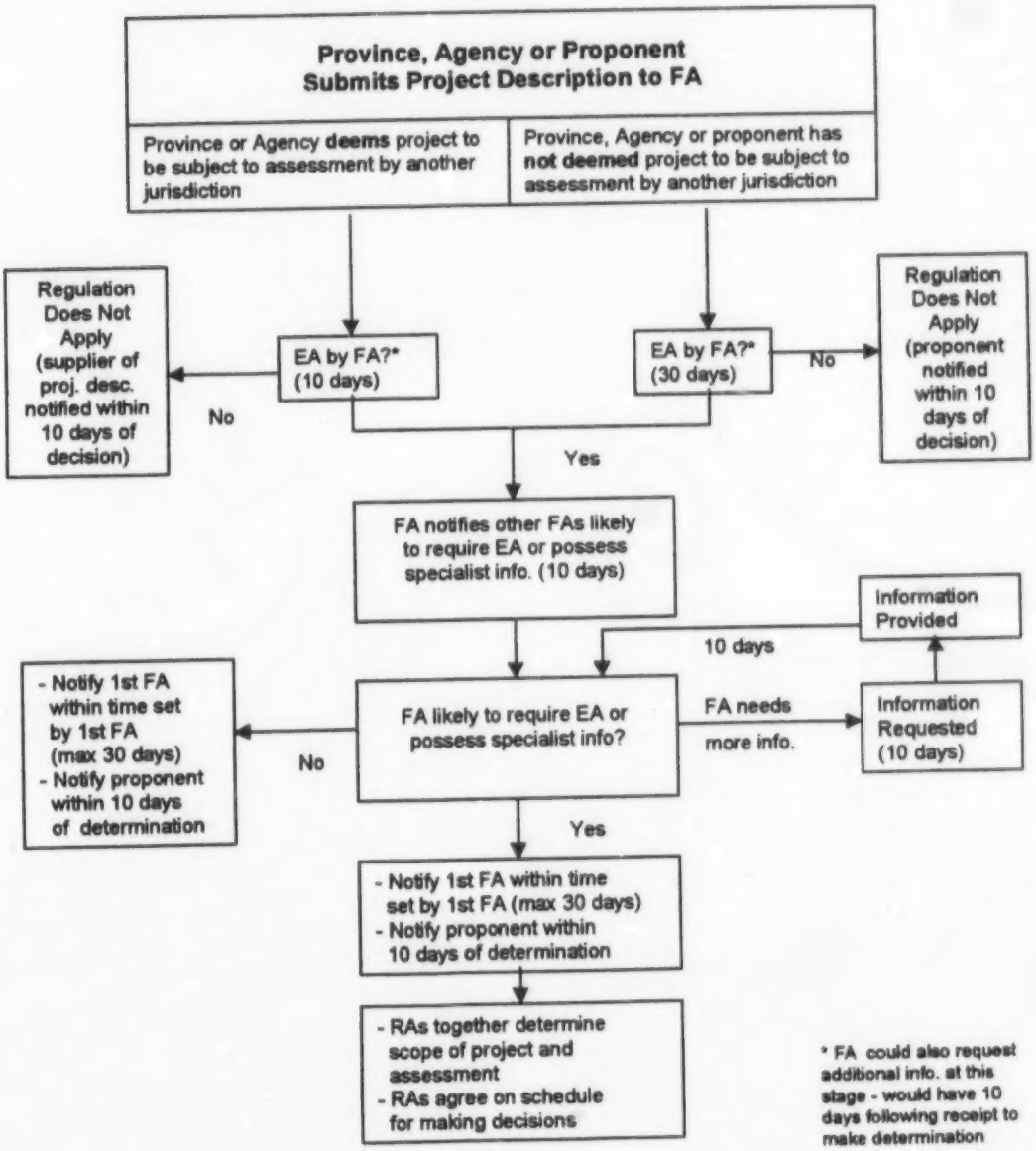
If, after consulting this guide, you need further advice or information on the *Regulations*, please contact the Canadian Environmental Assessment Agency's office in your region. A list of the regional offices is provided in Appendix 1.

Abbreviations used in this Guide

The Act	the Canadian Environmental Assessment Act
The Agency	the Canadian Environmental Assessment Agency
EA	Environmental Assessment
FEAI	Federal Environmental Assessment Index
FA	Federal Authority
RA	Responsible Authority

FIGURE 1: FEDERAL COORDINATION REGULATIONS

(excluding post-assessment requirements of s.10 of the regulations)


Province, Agency or Proponent Submits Project Description to FA
Province or Agency deems project to be subject to assessment by another jurisdiction
Province, Agency or proponent has not deemed project to be subject to assessment by another jurisdiction
Regulation Does Not Apply (supplier of proj. desc. notified within 10 days of decision)
EA by FA?* (10 days)
No
EA by FA?* (30 days)
No
Regulation Does Not Apply (proponent notified within 10 days of decision)
Yes
FA notifies other FAs likely to require EA or possess specialist info. (10 days)
Information Provided
10 days
- Notify 1st FA within time set by 1st FA (max 30 days)
- Notify proponent within 10 days of determination
FA likely to require EA or possess specialist info?
No
FA needs more info.
Information Requested (10 days)
Yes
- Notify 1st FA within time set by 1st FA (max 30 days)
- Notify proponent within 10 days of determination
- RAs together determine scope of project and assessment
- RAs agree on schedule for making decisions

* FA could also request additional info. at this stage - would have 10 days following receipt to make determination

Part I: Guide for Proponents

Definition of "proponent" in the Act:
In respect of a project, means the person, body, federal authority or government that proposes the project.

The *Regulations* were developed keeping in mind proponents' need for a timely, predictable EA process. The following describes the proponents' role in ensuring efficient coordination of EA requirements. This section applies to private-sector proponents, federal authorities that are proponents of a project, and other public-sector proponents.

Sending Out a Project Description

The most important way to ensure efficient coordination of EA requirements is to advise the federal and provincial governments as early as possible of a project that may require an EA.

The *Regulations* require that if a project description is sent to the appropriate party, the federal requirements for the project will be determined and communicated to the proponent in a timely manner.

A proponent may send a project description to a federal authority, the provincial government or the Agency. To decide who should receive the project description, consider the following:

- Ensure that the project description contains enough information for federal authorities to start the federal coordination procedure by providing the information specified in the Regulations (see definition of "project description" in section 1 of the Regulations).

- Send the project description to the federal authority that is most likely to be an RA (i.e. require an EA of the project under the Act). The federal authority will start the federal coordination procedure if it finds that it is likely to be an RA. Appendix 3 explains how to identify likely RAs. The regional office of the Agency can assist in the identification of potential RAs (Appendix 1 provides a list of Agency regional offices).

- If federal authorities respond to the project description indicating that they are not likely to be an RA, consider sending the project description to the Agency.

- If a provincial EA may be required, send the project description to the province with a copy to the Agency. The province will determine if a provincial EA is required. If it is required, the province and/or the Agency will start the federal coordination procedure. This activity may be initiated through federal departments participating within a provincial EA process.

- If the project description is being sent to more than one party, provide a distribution list to each one. This will facilitate coordination among the recipients of the project description and allow for the identification of other likely RAs that are not on the list.

Being Informed of the Results of the Coordination Procedure

The Regulations require that, as part of the coordination procedure, the proponent be informed of which federal authorities are likely to be RAs. There are time frames for the determination and notification procedures in the Regulations, so proponents can expect to know what the federal EA requirements are for their project in a timely fashion.

Part II: Guide for Federal Authorities

Sections 1 and 2: Interpretation and Application

Sections 1 and 2 of the *Federal Coordination Regulations*

INTERPRETATION

"Act" means the Canadian Environmental Assessment Act.
"day" means a day other than a Saturday or a holiday.
"environmental assessment report" means a screening report, a comprehensive study report, a mediator's report or a review panel report.
"power" means a power, duty or function referred to in section 5 of the Act.
"project description" means any information in relation to a project that includes

a) a summary description of the project;
b) information indicating the location of the project and the areas potentially affected by the project;
c) a summary description of the physical and biological environments within the areas potentially affected by the project; and
d) the mailing address and phone number of a contact person who can provide additional information about the project.

"project subject to assessment by another jurisdiction" means a project that is subject to an environmental assessment by a jurisdiction as defined in subsection 12(5) of the Act, except a project that is subject to a class environmental assessment under the Ontario Environmental Assessment Act.

APPLICATION

2. These Regulations apply to the environmental assessment of projects that are to be carried out in Canada.

Please note the defined terms which are used in the Regulations. When timelines are referred to in the Guide, the definition of "day" above will be assumed. Also note that the Regulations do not apply to projects outside Canada subject to the Act.

Section 3: Determination (for cases where there is no indication that a project is subject to assessment by another jurisdiction)

Section 3 of the *Federal Coordination Regulations*

DETERMINATION

3. (1) Subject to section 4, a federal authority that receives a project description from a province, the Agency or the proponent of the project shall, within 30 days after receipt of the project description, determine if

(a) the federal authority is likely to require an environmental assessment of the project under section 5 of the Act;

(b) the federal authority is not likely to require an environmental assessment of the project under section 5 of the Act; or

(c) additional information is necessary to make a determination referred to in paragraph (a) or (b).

(2) Where a federal authority determines that additional information is necessary pursuant to paragraph (1) (c), it shall request that information within 10 days after making the determination.

(3) A federal authority shall make a determination referred to in paragraph (1) (a), (b) or (c) within 10 days after receipt of the information requested pursuant to subsection (2).

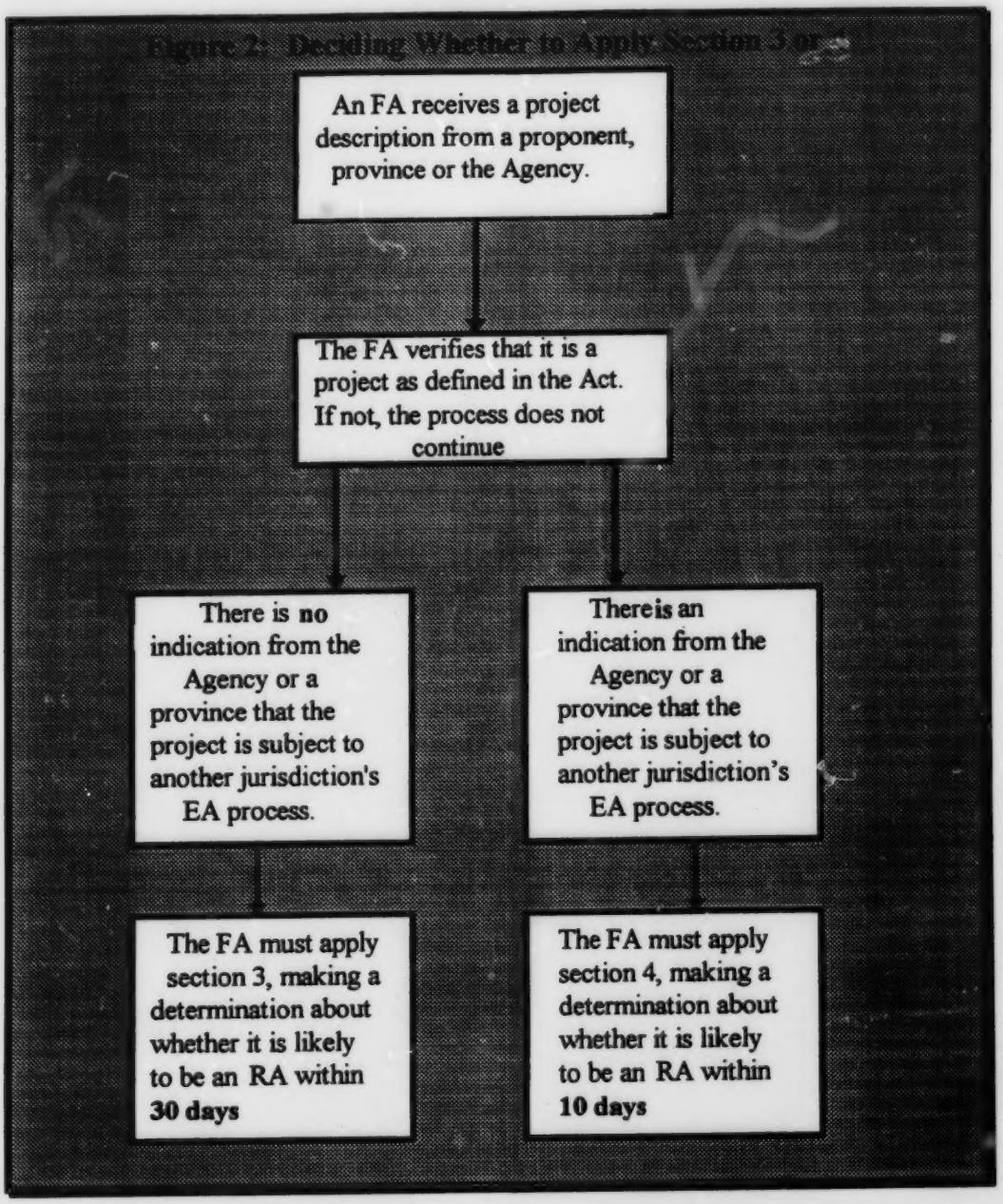
(4) Subject to subsection (5), a federal authority shall inform the proponent of the project of a determination referred to in paragraph (1) (a) or (b) within 10 days after making that determination.

(5) In the case of federal-provincial agreements under which the province is the implementing party, the federal authority shall inform the province of a determination referred to in paragraph (1) (a) or (b) within 10 days after making that determination.

Application of Section 3: Determination Requirements

Section 3 applies to a federal authority that has received a project description from a province, the Agency or the proponent, and there is no indication from either the Agency or the province that the project is subject to assessment by another jurisdiction. If there is such an indication, the federal authority should apply section 4 of the Regulations (refer to Figure 2). However, if the project is subject to a class assessment under the Ontario *Environmental Assessment Act*, the federal authority should apply section 3.

If a project description is received from a source other than a province, the Agency or the proponent, the federal authority may choose not to start the coordination procedure. It may forward the project description to the proponent with a request for advice on whether to proceed with the federal coordination procedure.


An FA receives a project description from a proponent, province or the Agency.
The FA verifies that it is a project as defined in the Act. If not, the process does not continue
There is no indication from the Agency or a province that the project is subject to another jurisdiction's EA process.
There is an indication from the Agency or a province that the project is subject to another jurisdiction's EA process.
The FA must apply section 3, making a determination about whether it is likely to be an RA within 30 days
The FA must apply section 4, making a determination about whether it is likely to be an RA within 10 days

If the project description does not contain the required information as defined in section 1, the federal coordination procedure should be started and the additional information requested from the party that provided the project description. However, if preliminary project information is received by a federal authority from the province or a proponent before the project details are clarified to the point that an application is imminent, then the federal coordination process should not be started. To avoid

delays, the project description should contain the information defined in section 1 of the Regulations. Figure 3 provides the procedures to apply sections 3 and 5.

Step A. Making the Determination

The federal authority must determine within a maximum 30 days whether:

- it is likely to be an RA;
- it is not likely to be an RA; or
- it requires additional information to make this determination.

Determining whether the federal authority is likely to be an RA

The federal authority will be an RA if it plans to exercise one of the duties, powers or functions related to a project listed in section 5 of the Act. Recall that the project must meet the definition of "project" in the Act, and it must not be excluded by the Act or Regulations under the Act. See Appendix 2 "Does the Act Apply?" for further information on this topic.

The federal authority does not need to be certain whether it is an RA, but rather, it needs to decide if it is *likely* that it is going to be an RA for the project. A determination that it is likely to be an RA does not commit the federal authority to actually requiring an EA of the project in the future; likewise a determination that it is unlikely to be an RA does not prevent the federal authority from later requiring an EA of the project.

If the federal authority is uncertain about what determination to make, it should consider determining that it is likely to be an RA. If it does so, it can participate in the coordination procedure until it is certain of its role. If it turns out later that the federal authority is not an RA, it can withdraw from the EA process as an RA. It may continue as an expert department. Withdrawing from the EA process once it has started is preferable to the potential delays caused by joining later after key decisions have already been made.

Requesting Additional Information

The federal authority has the option of requesting additional information if such information is needed to decide whether the federal authority is likely to be an RA. Additional information may include:

- further information from the proponent about the project, its location, and environments potentially affected by the project;
- legal opinions or internal documents; or
- information held by other federal authorities or jurisdictions.

The federal authority does not necessarily need all the information required for the exercise of a power before it begins the EA process.

If the federal authority determines that it needs additional information, it must request this information within 10 days of making this determination. The federal authority should direct the request to the most appropriate party or parties.

Once it receives the information requested, the federal authority has 10 days to make its determination.

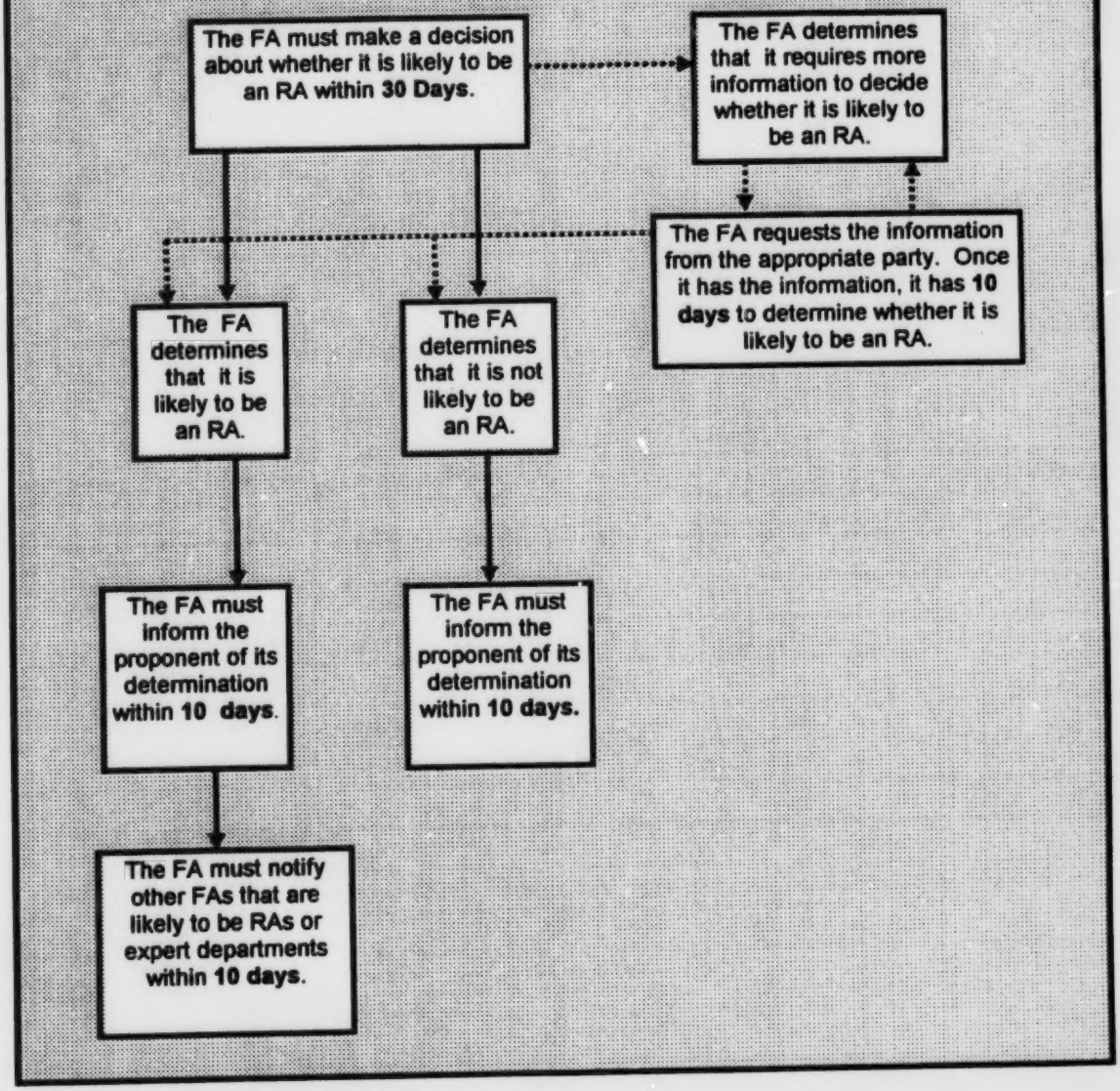
If absolutely necessary, the federal authority may request additional information again. It must request the information within 10 days of making this determination. Again, once it receives the requested information, the federal authority has 10 days to make its determination. The federal authority continues to the next step only after it has determined that it is likely or not likely to be an RA.

Step B. Informing the Appropriate Parties

The federal authority must inform the proponent of its determination within 10 days of making the determination, with the following exception.

In cases where the province is representing both federal and provincial involvement in a project under a federal-provincial agreement, the federal authority must inform the province of its determination within 10 days of making the determination. The Regulations describes these cases as "federal-provincial agreements under which the province is the implementing party." Typically, this means that the federal authority is exercising a power, duty or function in collaboration with a provincial government, and the provincial government is dealing with the proponent of the project on behalf of both governments.

Figure 3:
Section 3: Determination and Section 5: Notification


The FA must make a decision about whether it is likely to be an RA within 30 Days.
The FA determines that it requires more information to decide whether it is likely to be an RA.
The FA requests the information from the appropriate party. Once it has the information, it has 10 days to determine whether it is likely to be an RA.
The FA determines that it is likely to be an RA.
The FA determines that it is not likely to be an RA.
The FA must inform the proponent of its determination within 10 days.
The FA must inform the proponent of its determination within 10 days.
The FA must notify other FAs that are likely to be RAs or expert departments within 10 days.

Section 4: Determination (for cases where a project is subject to assessment by another jurisdiction)

Sections 4 of the *Federal Coordination Regulations*

4. (1) A federal authority that receives a project description from a province, the Agency or the proponent of the project shall, where the province in which the project is to be carried out or the Agency informs the federal authority that the project is a project subject to assessment by another jurisdiction, within 10 days after receipt of the project description, determine if

(a) the federal authority is likely to require an environmental assessment of the project under section 5 of the Act;

(b) the federal authority is not likely to require an environmental assessment of the project under section 5 of the Act; or

(c) additional information is necessary to make a determination referred to in paragraph (a) or (b).

(2) Where a federal authority determines that additional information is necessary pursuant to paragraph (1) (c), it shall request that information within 10 days after making the determination.

(3) A federal authority shall make a determination referred to in paragraph (1) (a), (b) or (c) within 10 days after receipt of the information requested pursuant to subsection (2).

(4) A federal authority shall inform the province, the Agency or the proponent that provided the project description of a determination referred to in paragraph (1) (a) or (b) within 10 days after making that determination.

Application of Section 4: Determination Requirements

Section 4 of the Regulations require that projects subject to assessment by another jurisdiction be considered in a shorter time frame than other projects. If the Agency or the province (including a provincial agency or body) indicates that a project is subject to assessment by another jurisdiction, section 4 of the Regulations applies (see Figure 4). The applicable definition of "jurisdiction" is given in the box below. If there is no indication from the province or the Agency that the project is subject to assessment by another jurisdiction, or if the project is subject to a class assessment under the Ontario *Environmental Assessment Act*, the federal authority should apply section 3 addressed previously.

If the project is subject to an EA under a land claim agreement, some additional considerations apply. Land claims may explicitly exclude the application of the Act, in which case, the *Regulations* do not apply. However, if the project is partially outside of the land claim area and encroach on federal jurisdiction, the Act may apply. The EA requirements under the Act would then be harmonized with the land claim process.

Definition of "jurisdiction" in subsection 12(5) of the Act:

(a) the government of a province;

(b) an agency or body that is established pursuant to the legislation of a province and that has powers, duties or functions in relation to the environmental effects of a project;

(c) a body that is established pursuant to a land claims agreement referred to in section 35 of the Constitution Act, 1982 and that has powers, duties or functions in relation to an assessment of the environmental effects of a project; or

(d) a governing body that is established pursuant to legislation that relates to the self-government of Indians and that has powers, duties or functions in relation to an assessment of the environmental effects of a project.

Step A. Making the Determination

The federal authority must determine within a maximum of 10 days whether:

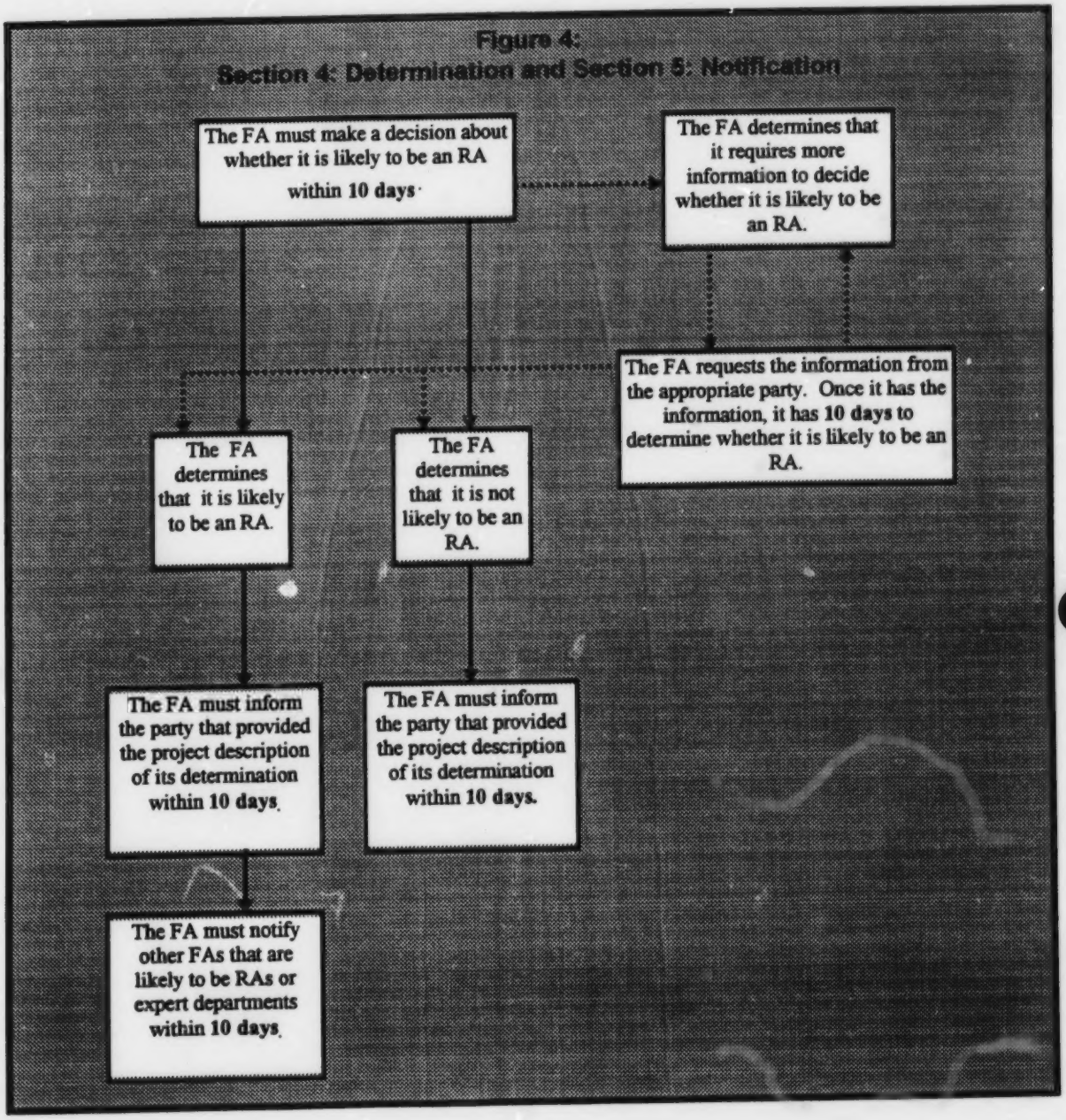
- it is likely to be an RA;
- it is not likely to be an RA; or
- it requires additional information to make this determination.

To make the determination, follow the procedure described in "Determining Whether the Federal Authority is Likely to be an RA" and "Requesting Additional Information" on p. 9.

Step B. Informing the Appropriate Parties

The federal authority must inform the party that provided it with the project description, that is, the province, the Agency or the proponent, within 10 days of making the determination.

Figure 4:
Section 4: Determination and Section 5: Notification


The FA must make a decision about whether it is likely to be an RA within 10 days.
The FA determines that it requires more information to decide whether it is likely to be an RA.
The FA requests the information from the appropriate party. Once it has the information, it has 10 days to determine whether it is likely to be an RA.
The FA determines that it is likely to be an RA.
The FA determines that it is not likely to be an RA.
The FA must inform the party that provided the project description of its determination within 10 days.
The FA must inform the party that provided the project description of its determination within 10 days.
The FA must notify other FAs that are likely to be RAs or expert departments within 10 days.

Section 5: Notification

Section 5 of the *Federal Coordination Regulations*

NOTIFICATION

5. (1) A federal authority that has determined pursuant to paragraph 3 (1) (a) or 4 (1) (a) that it is likely to require an environmental assessment of a project shall ensure that written notice is given, within 10 days after making that determination, to other federal authorities that are likely to

(a) exercise a power in respect of the project; or

(b) be in possession of specialist or expert information or knowledge that is necessary to conduct the environmental assessment of the project.

(2) The notice shall specify the name of the person to whom the other federal authorities are to respond, shall be accompanied by a project description and shall specify the time within which to respond referred to in subsection (3).

(3) The federal authority that gives the notice shall establish the time within which to respond under paragraph 5 (1) (a), (b) or (c) in consultation with the federal authority to whom the notice is given, but that time shall not exceed 30 days.

Application of Section 5: Notification Requirements

Section 5 only applies when a federal authority has determined that it is likely to be an RA under section 3 or 4.

Usually the party that originally sent the project description in section 3 or 4, that is, the proponent, the province or the Agency, will indicate if the project description has been sent to more than one federal authority. If this is the case, only one federal authority, that has determined that it is an RA, needs to apply section 5. The federal authorities should together, in collaboration with the Agency if necessary, determine which one will do this.

The Agency's practices and procedures for notifying Federal Authorities and potential Responsible Authorities vary from region to region. The procedures vary according to specific established federal / provincial agreements. For further information on how to deal with notification procedures or to clarify the situation within your region, please contact your regional office of the Canadian Environmental Assessment Agency.

Step A. Deciding Whom to Notify

The federal authority must notify other federal authorities that are likely to be RAs or expert federal authorities of the project within 10 days (excluding Saturday, Sunday and statutory holidays) of making a determination that it is likely to be an RA under section 3 or 4. It is important for the federal authority to exercise good judgement so that unnecessary notification of other federal authorities is avoided.

The federal authority has to make a judgement about which federal authorities are:

- likely to be RAs (refer to Appendix 3, "Identifying RAs for an EA"); or
- likely to be expert federal authorities with information or expertise needed to conduct an adequate assessment (refer to Appendix 4, "Identifying Expert Federal Authorities").

Step B. Consulting with the Federal Authorities Being Notified

The federal authority must set a time frame not longer than 30 days, within which the other federal authorities receiving the notice must respond. This time frame is to be set in consultation with the federal authorities being notified. A telephone conversation or e-mail exchange to consult on the time frame is sufficient.

The Agency regularly updates a list of contacts for each federal authority. To get a copy of this list, contact the Agency's office in your region (Appendix 1).

Step C. Issuing the Notices

The notices must include the project description and specify both to whom to respond to, and how long the recipient has to respond. The notice must be written, but it may be transmitted by fax or e-mail. For a sample notice, see Appendix 5.

Sections 6 and 7: Response Requirements

Sections 6 and 7 of the *Federal Coordination Regulations*

RESPONSE REQUIREMENTS

6. (1). A federal authority that receives a notice referred to in section 5 shall respond to the person specified in the notice, indicating its determination that

(a) it is likely to require an environmental assessment of the project under section 5 of the Act;

(b) it is not likely to require an environmental assessment of the project under section 5 of the Act;

c) it is in possession of specialist or expert information or knowledge that is necessary to conduct the environmental assessment of the project; or

(d) additional information is necessary to make a determination referred to in paragraph (a), (b), or (c).

(2) Where a federal authority determines that additional information is necessary pursuant to paragraph (1) (d), it shall request that information within 10 days after receipt of the notice.

(3) A federal authority shall make a response referred to in paragraph (1) (a), (b), (c) or (d) within 10 days after receipt of the information requested pursuant to subsection (2).

(4) A federal authority shall inform the proponent of the project of a determination referred to in paragraph (1) (a) or (b) within 10 days after making that determination.

7. A federal authority that has exercised a power in respect of a project or any part thereof before it was notified pursuant to section 5 shall provide a copy of the environmental assessment report to the person specified in the notice and shall indicate what course of action was taken pursuant to subsection 20 (1) or 37 (1) of the Act.

Application of Sections 6 and 7: Response Requirements

A federal authority that has received a notice described in section 5 must apply sections 6 and 7 of the Regulations, which indicate how the federal authority should respond (see Figure 5). The federal authority must respond within the time frame indicated in the notice.

If a project description is received from a source other than a federal authority, sections 6 and 7 should not be applied. Likewise, sections 6 and 7 should not be applied if the notice does not include the required information. If the notice or project description is incomplete, the federal authority that received the notice should inform the contact given in the notice. (Refer to "Step C. Issuing the Notices" above for what should be included in the notice, and the definition of "project description" in section 1 for what should be included in the project description).

Step A. Making the Determination

The federal authority must determine within the time frame specified in the notice if:

- it is likely to be an RA;
- it is not likely to be an RA;
- it is in possession of specialist or expert information that is necessary to conduct the EA;
- it requires additional information to make this determination.

Determining whether the federal authority is likely to be an RA

Refer to "Determining whether the federal authority is likely to be an RA" on page 9.

Expert federal authorities

A federal authority, if it is unlikely to be an RA of a project, must determine whether it is likely to be an expert federal authority. An expert federal authority is a federal authority that possesses specialist or expert knowledge or information that may be necessary to conduct the EA and that falls within the legislated mandate of that authority. Specialist or expert material may not be necessary to conduct an EA if:

- one of the federal authorities involved already possesses the information, or
- it is not applicable to the project in question.

Requesting Additional Information

The procedure for requesting additional information is the same as in "Requesting Additional Information" on page 9, except that the federal authority may also request additional information to determine whether it is an expert federal authority.

Step B. Informing the Appropriate Parties

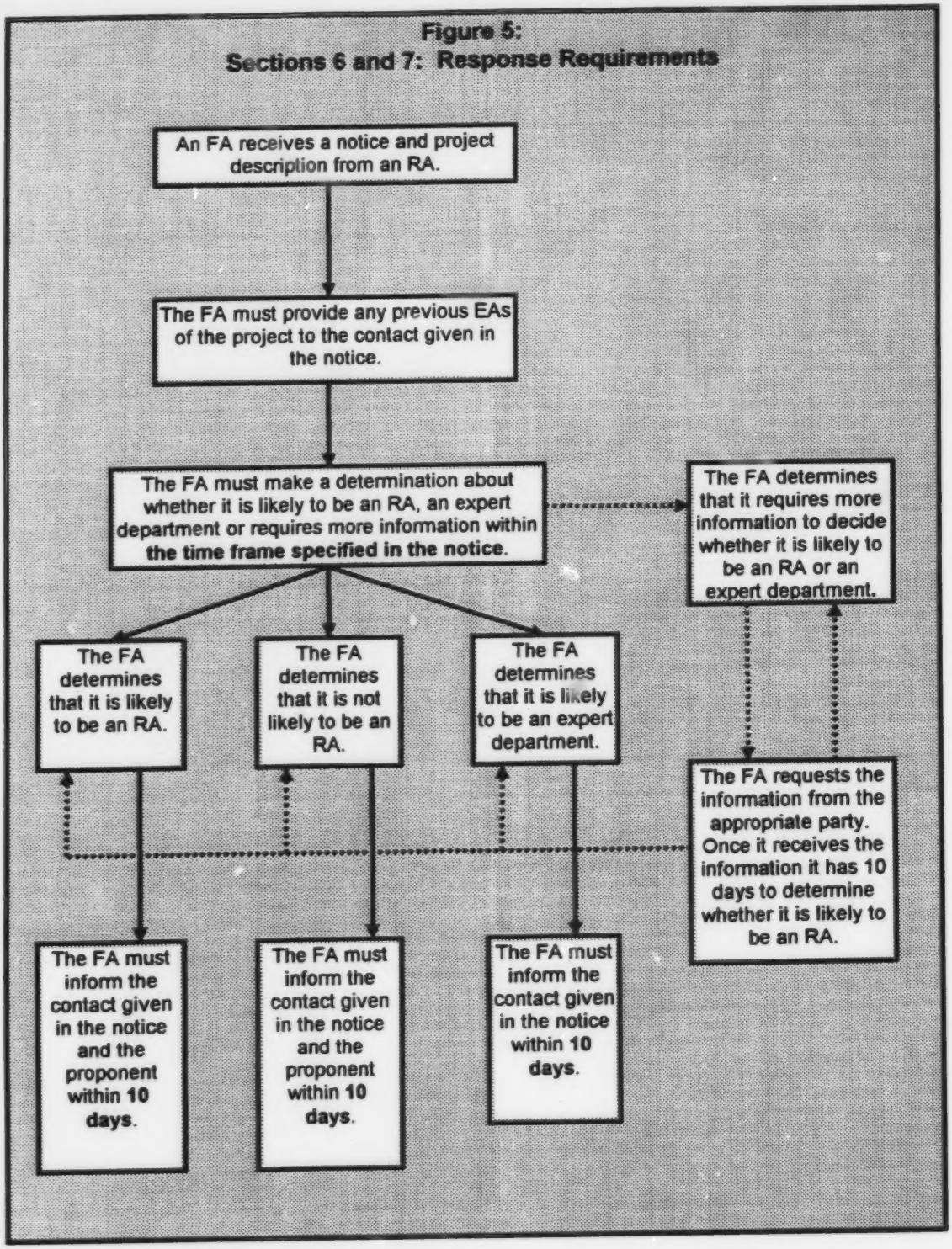
The federal authority must inform the contact given in the notice within 10 days after making the determination that it is likely to be an RA, not likely to be an RA, or likely to be an expert federal authority.

If the federal authority has determined either that it is likely to be an RA, or that it is not likely to be an RA, it must also inform the proponent of this determination within 10 days of making the determination.

Step C. Checking for Prior EAs (Section 7)

The federal authority notified under section 5 must check if it has previously conducted an EA under the Act of the project or part of the project. If it has, it must provide any previous EA to the contact given in the notice.

Figure 5:
Sections 6 and 7: Response Requirements


An FA receives a notice and project description from an RA.
The FA must provide any previous EAs of the project to the contact given in the notice.
The FA must make a determination about whether it is likely to be an RA, an expert department or requires more information within the time frame specified in the notice.
The FA determines that it requires more information to decide whether it is likely to be an RA or an expert department.
The FA determines that it is likely to be an RA.
The FA determines that it is not likely to be an RA.
The FA determines that it is likely to be an expert department.
The FA requests the information from the appropriate party. Once it receives the information it has 10 days to determine whether it is likely to be an RA.
The FA must inform the contact given in the notice and the proponent within 10 days.
The FA must inform the contact given in the notice and the proponent within 10 days.
The FA must inform the contact given in the notice within 10 days.

Section 8: Scope of the Environmental Assessment

Section 8 of the *Federal Coordination Regulations*

SCOPE OF THE ENVIRONMENTAL ASSESSMENT

Where a project is subject to a screening or a comprehensive study, the responsible authorities other than a federal authority referred to in section 7 shall, after consulting with all federal authorities that responded pursuant to paragraph 6 (1) (c), together determine

(a) the scope of the project pursuant to subsection 15 (1) of the Act

(b) the factors to be considered pursuant to section 16 of the Act; and

(c) the scope of the factors referred to in paragraph (b).

Application of Section 8: Scope of the EA

Section 8 must be applied when more than one federal authority has been identified as likely to be an RA. It applies only if the project is subject to a screening or comprehensive study. If the project has been referred to the Minister of the Environment for public review, section 8 does not apply. (The Minister has the discretion to determine the scope of the EA for projects that have been referred for public review.)

Determining the Scope of the Project, the Factors, and the Scope of the Factors

When there is more than one responsible authority involved in a project, a single EA should be conducted fulfill the legal requirements of all responsible authorities. It is important to note, however, that section 8 does not alter any legal requirements under the Act; each RA retains its decision-making responsibilities under the Act.

The likely RAs, after consulting with the expert federal authorities, must together determine the scope of the project, the factors to be considered and the scope of the factors. The best practice is for the federal authorities to agree on a scope that will meet all of their needs and conduct one EA based on this scope.

Lead RA

The RAs and expert federal authorities may decide that a lead RA should be designated to coordinate tasks in conducting the EA. If a lead RA is not designated, the EA can be managed by a committee. It is important to note that lead RA is an administrative function; the designation of a lead RA does not change the legal responsibilities of the various federal authorities under the Act.

The lead RA may:

- facilitate and coordinate the involvement of the other RAs and expert federal authorities;
- consult with the Agency;
- communicate with other jurisdictions;
- coordinate public consultations;
- be responsible for the FEAI; and
- propose cost-sharing arrangements.

More information about how to designate a lead RA and the role of a lead RA is provided in Appendix 6.

The RAs should not split the project, with each one only assessing a part of the project. Project splitting is undesirable because the project will not be assessed in its entirety and some parts of a project may not be addressed at all.

Some special considerations arise in cases where a project is subject to another federal process, such as a National Energy Board hearing. In these cases, the Agency, in consultation with officials managing the other federal process, will advise the federal authorities on how to apply section 8 so that it is consistent with the other federal process.

For guidance on determining the scope of an EA, refer to section 1.4 of *The RA Guide* available from the Agency.

Public Registry Responsibilities

The requirements of section 55 under the Act have not changed under the Regulations. Please refer to the Reference Guide on the Public Registry which is part of the Responsible Authority's Guide.

Sections 9 and 10: Decision of a Responsible Authority

Sections 9 and 10 of the *Federal Coordination Regulations*

DECISION OF A RESPONSIBLE AUTHORITY

9. When there are two or more responsible authorities in relation to a project, they shall agree on a schedule for

a) taking a course of action under subsection 20 (1) or 37 (1) of the Act and making public that course of action; and

(b) where applicable, making their recommendations to the Governor in Council under subsection 5 (2) of the Act.

10. Where a project is subject to a comprehensive study in accordance with these Regulations, a course of action under section 23 or subsection 37 (1) of the Act shall not be taken until the responsible authority, the Minister or the federal authority referred to in subsection 5 (2) of the Act receives

(a) all of the responses sought from the federal authorities that were notified pursuant to section 5; and

(b) written confirmation from all of the responsible authorities involved in the environmental assessment of the project that the factors determined pursuant to section 8 have been considered and that the environmental assessment report is complete.

Application of Section 9: Agreeing on a Schedule

This section of the Regulations can be of assistance in the context of multiple RAs to prevent RAs from arriving at conflicting conclusions with respect to the project. It is preferable to avoid a situation where one RA finds non-significant environmental effects and decides to proceed with the exercise of its power with respect to the project while another RA concludes the opposite.

Subsections 5(2), 20(1) and 37(1) of the Act indicate the decisions that an RA may make following the completion of an EA. Each RA must make its own decision regarding the project under the Act and make that decision public.

Ideally, the decisions will be announced at the same time, but the circumstances of some projects may not allow this.

The federal authorities must agree on a schedule for making their decisions. Though not a requirement of the Regulations, it may be appropriate in some circumstances to release the schedule to the proponent and the public prior to the decisions being released.

Application of Section 10: Collecting Responses and Confirmations

The lead RA or another RA must collect:

- all the responses to the notifications sent according to section 5, and
- written confirmation from all of the responsible authorities involved in the EA that all the factors determined under section 8 have been considered and the EA report is complete.

These responses and confirmations must be incorporated into the comprehensive study report and could be incorporated into a screening report.

This provision complements s.13 of the Act which prevents the exercise of any powers, duties or functions until the comprehensive study report is complete and a decision made under s.37 of the Act. It serves as a useful requirement to double check that the EA is indeed complete before any course of action is taken.

Section 11: Conflicting Time Limitations

Section 11 of the *Federal Coordination Regulations*

CONFLICTING TIME LIMITATIONS

11.A federal authority is not required to comply with a provision of these Regulations where

(a) the provision imposes a time limitation that conflicts with a time limitation imposed upon the federal authority under an Act of Parliament other than the Act; and

(b) the Agency determines that the federal authority has, for the purpose of coordinating federal environmental assessments, an independent practice of regular and uniform notification of other federal authorities that are likely to require an environmental assessment of projects.

Application of Section 11: Conflicting Time Limitations

If a federal authority is governed by a legislative or regulatory regime that has time limitations that conflict with the Regulations, the federal authority may apply to the Agency to be exempted from a provision or provisions of the Regulations.

Specifically, to be exempted from a provision of the Regulations, a federal authority should write to the Agency showing that:

- a time frame in the Regulations conflicts with a time limitation imposed by legislation or Regulations; and
- the federal authority has an independent practice of regular and uniform notification of other federal authorities that are likely to require EAs of projects that is as timely and predictable as the procedure in the Regulations.

Exemptions will not apply to federal authorities that have slower response requirements. Note also that exemptions will be allowed only to the extent necessary to comply with the federal authorities' conflicting time limitation.

Should the Agency determine that a federal authority may be exempted from certain provisions of the Regulations, it will inform the other federal authorities of its decision.

APPENDIX 1

LIST OF CANADIAN ENVIRONMENTAL ASSESSMENT AGENCY REGIONAL OFFICES

CEAA Regional Offices

VANCOUVER OFFICE
Suite 320 – Sinclair Centre
757 West Hastings Street
Vancouver, British Columbia
V6C 1A1

Phone	(604) 666-2431 or 666-6989
Fax	(604) 666-6990
E-mail	pscott@wimsey.com

EDMONTON OFFICE
Suite 100
Revillon Bldg.
10237-104 Street NW
Edmonton, Alberta
T5J 1B1

Phone	(403) 422-1410 or (403) 422-7704
Fax	(403) 422-0055
E-mail	ceaaalta@oanet.com

HALIFAX OFFICE
Suite 1030, TD Centre
1791 Barrington Street
Halifax, Nova Scotia
B3J 3L1

Phone	(902) 426-0564
Fax	(902) 426-6550

WINNIPEG OFFICE
123 Main Street
Suite 263
Winnipeg, Manitoba
R3C 4W2

Phone	(204) 984-2457
Fax	(204) 983-7174
E-mail	dmcnaugh@mts.net

QUEBEC OFFICE
200 Sacré-Coeur Blvd.
13th Floor
Fontaine Bldg.
Hull, Quebec
K1A 0H3

Phone	(819) 997-2213
Fax	(819) 997-4931
E-mail	bourgonm@ceaapost.ceaa-acee.x400.gc.ca

ONTARIO OFFICE
200 Sacré-Coeur Blvd.
13th Floor
Fontaine Building
Hull, Quebec
K1A 0H3

Phone	(819) 997-2244
Fax	(819) 994-1469
E-mail	rivering@fox.nstn.ca

Comprehensive Study Team

HEADQUARTERS
200 Sacré-Coeur Blvd.
13th Floor
Fontaine Building
Hull, Quebec
K1A 0H3

PARKER, Brad	(819) 953-5044
THERRIEN, Marie-France	(819) 953-2537
Fax	(819) 994-1469

APPENDIX 2

"DOES THE ACT APPLY", EXCERPT FROM THE *RA GUIDE*

Does the Act Apply?

1.3 Start-up

Before starting a self-directed EA, an RA must address five key questions:

- Does the Act apply to its project?
- Should the project undergo a screening or comprehensive study?
- Has a public registry been established for the project?
- Is the project likely to cause public concerns?
- Is the EA of the project covered by an agreement with another government?

This section reviews each of these questions as they apply to a screening and comprehensive study.

1.3.1 Does the Act apply?

To determine whether the Act applies, the RA must determine that the proposal:

- is a "project" for the purposes of the Act;
- is not excluded by the Act or by a regulation under the Act;
- involves a federal authority;
- involves an action that triggers the need for an EA under the Act.

See Figure 1-2 for a summary.

Is the proposal a "project" according to the Act?

Figure 1-3 summarizes the decisions required in determining whether the RA has a project as defined in the Act.

A project can be either:

- an undertaking in relation to a physical work, such as any proposed construction, operation, modification, decommissioning, or abandonment; or
- any proposed physical activity not relating to a physical work that is set out in the Regulations to the Act.

Figure 1-2: Does the Act Apply?

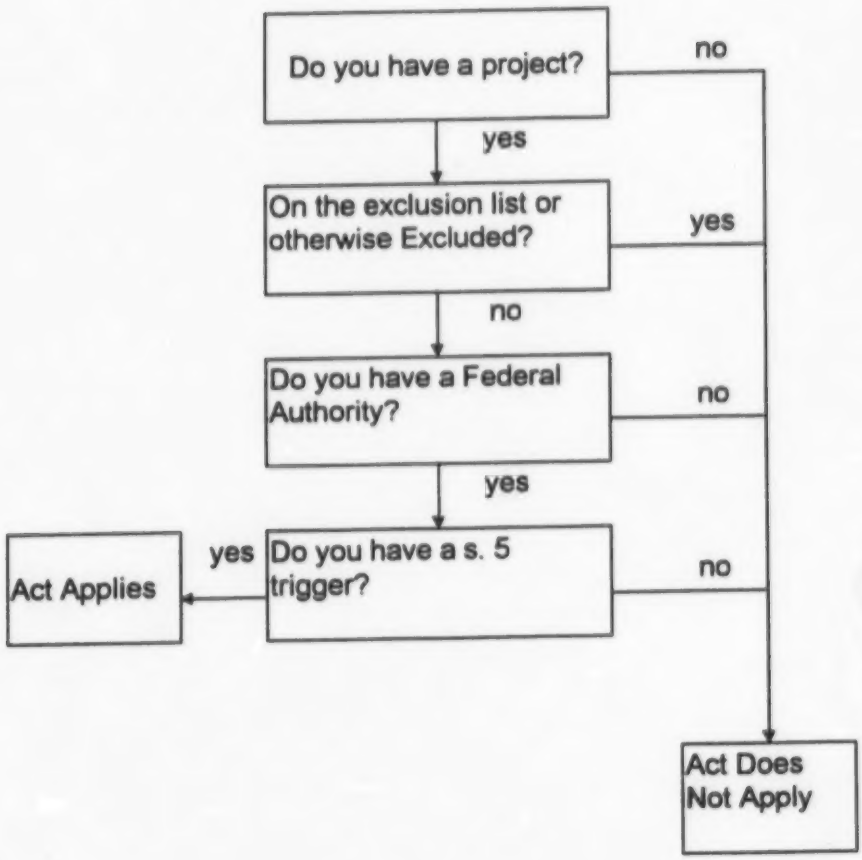
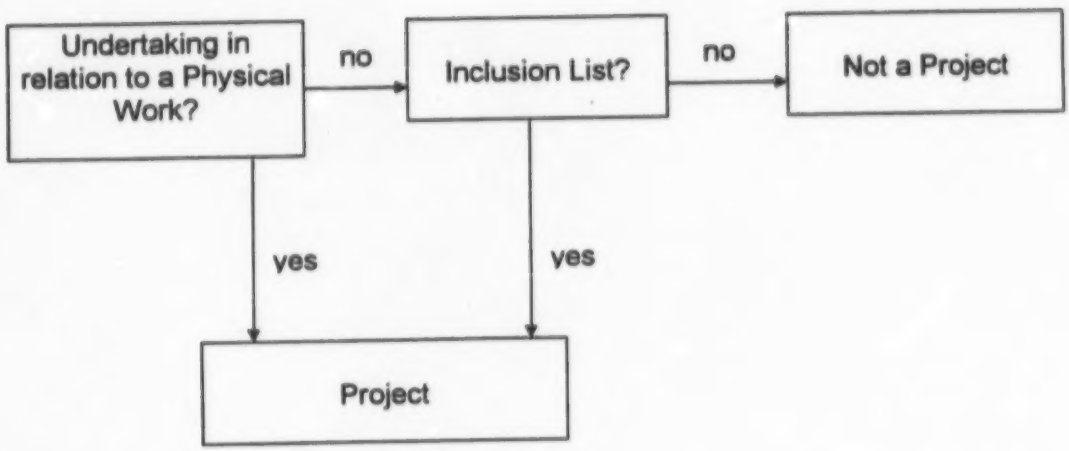


Figure 1-3: Is the Proposal a "Project" under the Act?



The first category covers most projects. The second category is designed to bring into the EA process certain activities that could result in significant adverse environmental effects. A proposed physical activity will fall under the Act only if it is described on the Inclusion List (Appendix C: in preparation) prepared under the Regulations to the Act.

Examples of project definition

Undertakings in relation to a physical work
- *dredging as part of constructing a bridge*
- *construction of a fish ladder*

Physical activities not relating to a physical work
- *the movement of CFCs out of Canada*
- *the harvesting of marine plants in coastal waters*
- *low-level flying over the back country of a National Park*
- *ocean dumping of substances prescribed by the* Canadian Environmental Protection Act

Is the project excluded?

A project may be excluded from the need to undergo an EA under the Act when it is

- carried out in response to a national emergency for which special temporary measures are being taken under the *Emergencies Act*;
- carried out in response to an emergency and carrying out the project is in the interest of preventing damage to property or the environment or is in the interest of public health or safety;
- carried out for national security reasons;
- described on the Exclusion List, which are undertakings in relation to a physical work considered to have an insignificant impact on the environment, such as simple renovations and routine operations.

Does the project involve a federal authority?

An EA under the Act must be triggered by an action of a federal authority. A federal authority is

- a federal Minister of the Crown;
- an agency or other body of the federal government that is ultimately accountable to Parliament through a federal Minister of the Crown;
- any federal department or departmental corporations set out in Schedule I or II to the *Financial Administration Act*;

- any other body prescribed in the Regulations to the Act.

The following are not federal authorities under the Act:

- the governments of the Yukon or Northwest Territories;
- a council or band under the Indian Act;
- certain harbour commissions;
- Crown corporations within the meaning of the *Financial Administration Act*.

Does the project involve an action that triggers the need for an EA?

An EA is required before a federal authority exercises one or more of the following duties, powers or functions in relation to a project:

- proposes a project;
- grants money or other financial assistance to a project;
- grants an interest in land to enable a project to be carried out (that is, sells, leases, or otherwise transfers control of land); or
- exercises a regulatory duty in relation to a project, such as issuing a permit or licence, that is covered under the Law List Regulation.

The EA must be completed before the federal authority exercises any of these powers, duties, or functions.

Not every federal licensing or permitting action relates to projects that may cause environmental effects, however. Therefore, only those regulatory duties covered under the Law List will be considered as federal triggers for an EA.

With respect to the second factor, if a federal authority or the Government of Canada enters into an agreement with a province to provide financial support and the essential details of the project are **not** specified at that time, the federal authority or the Government of Canada must ensure that the agreement provides for an EA of that project as early as possible in the planning stage and before any irrevocable decisions are made.

If the agreement is with a foreign government (for projects to be carried out both outside Canada and outside federal lands), the same conditions apply in so far as is practicable and subject to any other agreements to which the Government of Canada or the federal authority is party.

If the essential details of the project **are** known, or will be known before the federal authority provides financial support, the federal authority must conduct the EA before such support is given.

In addition to the four triggering factors listed above, the Act also applies in the following special case: When the Governor in Council is responsible for issuing a licence or other authorization listed on the Law List that would allow a project to proceed, an EA must be conducted before that decision is taken. The federal authority recommending that the Governor in Council take action with respect to a project must ensure an EA is done early in the planning stages and before irrevocable decisions are made. This federal authority has the same duties as an RA, except for the responsibility for making a decision with respect to the project.

Is the project likely to involve transboundary effects?

The transboundary provisions of the Act give the Minister of the Environment the authority to refer a project directly to a mediator or panel, if the Minister believes that the project may cause significant adverse transboundary environmental effects in cases when the project would otherwise not require an EA, and no other federal Act or Regulations apply.

Transboundary effects under the Act refer to adverse effects that are likely to occur

- on federal lands because of projects carried out outside these lands;
- off federal lands (because of projects carried out on these lands);
- across provincial boundaries; or
- across international boundaries.

Special EA procedures may be required if a project is likely to have significant adverse environmental effects across Canada's international boundaries. Canada is a signatory to the *Convention on Environmental Assessment in a Transboundary Context*. The Convention seeks to ensure that countries take measures to prevent, reduce, and control significant adverse transboundary environmental effects from proposed activities. Signatory countries must

- notify an affected country of any proposed activities likely to cause a significant adverse transboundary impact (guidelines are listed in the Convention);
- provide information on the project to the affected country;
- allow the public in the affected country an opportunity to comment on the proposed project, if requested to do so;
- conduct an EA of the project before making any decision on providing federal support to the project;
- inform the affected country of its decision on the project.

There is a need to ensure that projects with possible significant transboundary impacts are assessed according to the requirements of the Convention while avoiding unnecessary duplication, delays, and confusion that could arise from separate assessments. Under the **Framework for Environmental Assessment**

Harmonization, adopted by the Canadian Council of Ministers of the Environment in November 1992, federal, provincial and territorial governments agreed to adhere to the provisions of the Convention. Bilateral Agreements for Environmental Assessment Cooperation, under the harmonization framework, will establish the broader principles and context for coordination and cooperation on environmental assessment. Specific procedures related to the assessment of transboundary impacts under the Convention will be established through subsidiary agreements to the bilateral harmonization agreements.

For more information on Canada's obligations under the Convention, RAs should contact the Agency.

Has the project been previously assessed?

When a proponent proposes to carry out all or part of a project for which a screening or comprehensive study has already been conducted, it can use that previous EA to an appropriate extent when

- the project did not proceed after the EA was completed;
- in the case of a project that is in relation to a physical work, the proponent proposes an undertaking in relation to that work different from that proposed when the EA was conducted;
- the manner in which the project is to be carried out has subsequently changed; or
- the renewal of a licence, permit, approval, or other action under a prescribed provision is sought.

The RA must ensure, however, that adjustments are made in its screening report or comprehensive study report to take into account any significant changes in the environment, including cumulative environmental effects, and in the circumstances of the project since the previous EA was conducted.

More than one RA

The same project may have two or more RAs. To ensure that only one EA is conducted for each project, rather than each RA conducting its own EA, one of the RAs could be designated as the lead RA, or the RAs could coordinate their assessment in a team or working group structure.

APPENDIX 3

"IDENTIFYING RAs FOR AN EA" EXCERPT FROM PROCESS *ADVICE FOR THE PARTICIPATION OF FEDERAL AUTHORITIES IN AN ENVIRONMENTAL ASSESSMENT*

Identifying RAs for an EA

3. Identifying Other RAs for an EA

This section consists of a series of detailed questions designed to assist practitioners in identifying other RAs which are triggered under ss. 5(1) and 5(2) of the Act.

If the answer to any one of questions A to D is "Yes", contact the identified federal authority to confirm their involvement in the EA.

A: Is the proponent a federal department or agency?

B: Have you or the proponent identified any federal authorities providing a payment, loan guarantee or any other form of financial assistance for the project?

C: Have you or the proponent identified any federal authorities providing federal lands through a sale lease or other disposal of an interest in federal land for the project?

D: Have you or the proponent identified any federal licence, permit or approval it requires to carry out the project?

If you are uncertain, proceed to the questions below. Each question is followed by a legislative provision(s) contained on the Law List regulation, and a list of federal authorities that administer the legislation. If the answer to a question is "Yes", then the legislative provision that follows the question may be triggered under the Act, and the department or agencies listed should be contacted to determine their interest in the project. The annotated Law List can be found in Appendix II.

D1 Does the project occur in a National Park or National Historic Site, or is it likely to affect a National Park or National Historic Site?

National Historic Parks General Regulations
National Parks General Regulations
National Parks Building Regulations
National Parks Lease and Licence of Occupation Regulations (1991)
National Parks Wildlife Regulations
Wood Buffalo National Park Game Regulations
National Parks Act

Federal Authority: Canadian Heritage.

D2 Does the project occur in Yukon or the Northwest Territories?

If "yes", review questions D18 to D20.2.

D3 Is the project likely to affect Indian Reserve lands?

Indian Mining Regulations
Indian Oil and Gas Regulations
Indian Reserve Waste Disposal Regulations
Indian Timber Regulations
Indian Act

Federal Authority: Indian and Northern Affairs.

D4 Is the project likely to affect a water body or involve works in, over, or under a water body, or result in the deposit of a potential pollutant into a water body?

If "yes", review questions D21 - D28.

D5 Is the project likely to:

- **involve the production or recovery of oil or gas?**
- **affect a pipeline, property or related facility, that is used for the transmission of oil, gas or any other commodity and that connects provinces or extends beyond the limits of a province? A commodity pipeline excludes a sewer or water pipeline that is used solely for municipal purposes.**
- **affect an international power line or property that is used for the purpose of transmitting electricity outside a province?**

Canada Oil and Gas Operations Act
National Energy Board Act

Federal Authority: National Energy Board.

D6 Is the project likely to affect the operation of a railway company or property owned or leased by a railway company or require the installation of telephone, electricity, telegraph or other wire services for a railway facility?

Ammonium Nitrate Storage Facilities Regulations, Railway Safety Act
Flammable Liquid Bulk Storage Regulations, Railway Safety Act
Chlorine Tank Car Unloading Facilities Regulations, Railway Safety Act
Liquefied Petroleum Gases Bulk Storage Regulations, Railway Safety Act
Anhydrous Ammonia Bulk Storage Regulations
Railway Act (replaced by the *Canada Transportation Act*)
Railway Safety Act
Railway Relocation and Crossing Act
National Transportation Act (replaced by the *Canada Transportation Act*)

Federal Authorities: Canadian Transportation Agency and Transport Canada if Railway Safety Act is involved.

D7 Does the project involve the mining, processing or use of thorium or uranium or other radioactive prescribed substances?

Uranium and Thorium Mining Regulations
Atomic Energy Control Regulations

Federal Authority: Atomic Energy Control Board.

D8 Does the project involve the testing or operation of a mobile PCB treatment or destruction system?

Federal Mobile PCB Treatment and Destruction Regulations

Federal Authority: Environment Canada.

D9 Does the project involve wildlife reserves, or the import of animals or birds?

If "yes", review questions D30 to D32.

D10 Does the project involve replacement or repair of a bridge? (See also the section on Projects Involving Water)

Bridges Act

Federal Authority: Public Works and Government Services.

D11 Does the project involve the construction, operation or maintenance of a telecommunications service by submarine cable in the marine environment (not in fresh water)?

Telecommunications Act
External Submarine Cable Regulations

Federal Authority: Industry Canada.

D12 Does the project involve the selection of a site or construction of a radio communications tower?

Radiocommunication Act

Federal Authority: Industry Canada.

D13 Could the project result in international air pollution?

Canadian Environmental Protection Act

Federal Authority: Environment Canada.

D14 Will the project result in cutting of timber or construction of roads in a federal Forest Experimental Area?

Timber Regulations, 1993

Federal Authority: Natural Resources.

D15 Will the project involve the operation of aircraft in sonic or supersonic air flights?

Aeronautics Act

Federal Authority: Transport Canada.

D16 Does the project involve the production or holding of explosives in a magazine?

Explosives Act

Federal Authority: Natural Resources.

D17 Does the project involve the federal government in the acquisition, administration or disposal of real property for which a licence for any use or occupation of real property is required?

Federal Real Property Regulations

Federal Authority: All Ministers providing licences.

PROJECTS IN YUKON OR THE NORTHWEST TERRITORIES

D18 Will the project occur on lands in Yukon or the Northwest Territories that are under the control, management and administration of Indian and Northern Affairs and require the issuance of a Class A or Class B permit?

Territorial Lands Use Regulations

Federal Authority: Indian and Northern Affairs.

D19 Will the project occur in Yukon? If yes continue, if no go to D20.

D19.1 Will the project likely result in open fires or operation of an engine during fire season?

Yukon Forest Protection Regulations

Federal Authority: Indian and Northern Affairs.

D19.2 Does the project involve the taking or diversion of water or the deposit of waste into water?

Yukon Waters Act

Federal Authority: Indian and Northern Affairs.

D19.3 Does the project require cutting and removal of trees or timber?

Yukon Timber Regulations

Federal Authority: Indian and Northern Affairs.

D20 Will the project occur in the Northwest Territories? If "yes" continue, if "no" go to D3.

D20.1 Does the project involve a reindeer reserve?

Northwest Territories Reindeer Regulations

Federal Authority: Indian and Northern Affairs.

D20.2 Does the project involve the taking or diversion of water or the deposit of waste into water?

Northwest Territories Waters Act

Federal Authority: Indian and Northern Affairs.

PROJECTS INVOLVING WATER

D21 Is either of the following two situations likely to result in the deposit of waste of any type into Arctic waters;

- **the construction, alteration or extension of a project; or**
- **in the event a ship is in distress, wrecked or abandoned.**

Arctic Waters Pollution Prevention Act

Federal Authority: Transport Canada.

D22 Is the project likely to result in the deposition of materials into the marine environment?

Canadian Environmental Protection Act

Federal Authority: Environment Canada.

D23 Is the project likely to affect fish or fish habitat, affect the quantity or quality of water available for fish or result in the destruction of fish by means other than fishing?

Fisheries Act

Federal Authority: Fisheries and Oceans.

D24 Is the project likely to result in the deposition of metal mining liquid effluent into water frequented by fish?

Metal Mining Liquid Effluent Regulations
Fisheries Act

Federal Authority: Environment Canada/Fisheries and Oceans.

D25 Is the project likely to affect the navigability of a water body or does it involve the removal or destruction of a wreck or abandoned vessel from a water body?

Navigable Waters Protection Act

Federal Authority: Fisheries and Oceans (Coast Guard).

D26 Will the project result in the construction, operation or decommissioning of a water project (dam, hydro electric generating station) on federal lands or lands of which the federal government has the right to dispose?

Dominion Water Power Regulations
Dominion Water Power Act

Federal Authority: Canadian Heritage (for lands administered by Parks Canada South of 60 degrees N)/Indian and Northern Affairs.

D27 Will the project affect the natural flow of an international river (water flowing from any place in Canada to any place outside Canada) or affect the actual or potential use of that river outside Canada?

International River Improvements Regulations

Federal Authority: Environment Canada.

D28 **Is the project likely to take place on, involve dredge or fill operations in, draw water from or discharge water to a historic canal administered by and operated by Parks Canada?**

I.A. and N.D. Canal Land Regulations
Public Lands Licensing Order
Heritage Canals Regulations

Federal Authority: Canadian Heritage

PROJECTS INVOLVING WILDLIFE, ANIMAL IMPORT OR MIGRATORY BIRDS

D30 **Does the project occur in a wildlife area as defined in the Wildlife Area Regulations?**

Wildlife Area Regulations

Federal Authority: Environment Canada.

D31 **Is the project likely to result in the killing, capturing, taking or possession of a migratory bird or its nest or eggs, or in the collection of eiderdown, or deposit of oils or other harmful substance in areas frequented by migratory birds, or is it likely to affect migratory bird habitat within a bird sanctuary, or result in the release of a species of bird not indigenous to Canada?**

Migratory Bird Sanctuary Regulations
Migratory Birds Regulations

Federal Authority: Environment Canada.

D32 **Is the project likely to result in the import of an animal into Canada from any country other than the United States for the purposes of game ranching?**

Health of Animals Regulations

Federal Authority: Agriculture and Agri-Foods Canada.

4. Managing the EA

Where there is more than one RA for an EA, they should collectively determine how the EA will be managed. This section discusses some models for making this determination and the roles and responsibilities involved in managing the EA.

4.1 Determining How the EA will be Managed

This reference guide offers two possible models for managing the EA, the committee model and the hierarchical model.

Committee Model
For some EAs, a general agreement among RAs to share the various management functions may be all that is required. Under this model the various roles and responsibilities (see section 5.2) of managing the EA are assumed by a working committee of the RAs. Tasks would be assigned and co-ordinated by the committee.

Guidance for the establishment and operation of the committee can be provided by the Agency on a case-by-case basis.

Hierarchical Model
In some cases, the selection of a lead RA is often an operational necessity (although the Act does not require it). A lead RA can co-ordinate the overall management of the EA and serve as a point of contact thereby providing greater certainty to proponents, the public and provinces.

Under this model, the EA management responsibilities are assigned to the department with the "greatest interest" in the project. This determination can be made using the following considerations:

- If the project proponent (under ss. 5(1)(a)) is an RA, then that RA is the lead.
- If there are no proponent RAs, but only RAs which are: proposing to make a financial contribution (ss. 5(1)(b)), a land contribution (ss. 5(1)(c)), or take a regulatory decision (ss. 5(1)(d) or ss. 5(2)) the lead may be determined based on the following factors (listed in descending order of importance).

  1) Magnitude of RA's involvement in project

  A financial or land contribution to a project may be weighed against a regulatory trigger. For example, a financial contribution to the project of less than $50,000, or a land contribution of less than 10h in area could be considered insignificant in comparison to involvement in the project through a Law List entry. The importance of potential issues to the public coupled with

the RAs mandate may also be used to determine the magnitude of a RAs involvement in a project.

APPENDIX 4

"IDENTIFYING EXPERT FEDERAL AUTHORITIES", EXCERPT FROM *INVOLVING EXPERT FEDERAL AUTHORITIES*

Identifying Expert FAs

4.2 Identification of appropriate expert federal authorities

A key step for the RA is to identify, at the start of an EA, those expert FAs with information or knowledge relevant to the particular needs of the EA, and to plan how to involve them. Table 1 lists the FAs that could have specialist or expert information or knowledge on various subjects relevant to conducting an EA under the Act. (Note: the list in Table 1 is not exhaustive. Additional areas of expertise may be identified by the RA through direct contacts with the appropriate FAs.)

Table 1
Identifying Expert Federal Authorities

Environmental Issues	Expert Federal Authority
1. Environmental effects[1]	
Changes in the environment:	
• general	Environment Canada
• air	Environment Canada
• land	Environment Canada Natural Resources Canada
• wildlife	Environment Canada
• fish and fish habitat	Fisheries and Oceans Canada
• soil	Agriculture Canada
• forest resources	Natural Resources Canada
• humans	Health Canada
• water	Environment Canada Fisheries and Oceans Natural Resources Canada
Related changes in:	
• sustainable use	Environment Canada
• human health conditions	Health Canada
• socio-economic conditions	Agriculture Canada Environment Canada Fisheries and Oceans Canada Indian and Northern Affairs Canada Industry, Science and Technology Canada Natural Resources Canada
	Health Canada
• cultural resources	Canadian Heritage Indian and Northern Affairs Canada
• aboriginal resource use	Indian and Northern Affairs Canada
• aboriginal land use	Health Canada
• historical, archaeological, paleontological and architectural resources	Canadian Heritage Natural Resources Canada Public Works Canada
• management of protected areas-national parks, national historic sites, historic rivers and heritage canals	Canadian Heritage

[1] from definition in the *Canadian Environmental Assessment Act*

2.	**EA process and procedures**	Canadian Environmental Assessment Agency Environment Canada
3.	**International environmental issues**	Foreign Affairs and International Trade Canada Canadian International Development Agency

APPENDIX 5

SAMPLE LETTERS

SAMPLE LETTER No. 1

The province sends a project application to the Agency; the Agency sends a letter to FAs for determination (s. 4 of the Regulations)

TO: Distribution

FROM: Canadian Environmental Assessment Agency

DATE: June 1997

SUBJECT: Northern Forest Products LTD.

The B.C. Environmental Assessment Office (EAO) has received an application under the B.C. *Environmental Assessment Act* from Northern Forest Products Ltd. for a Project Approval Certificate to construct and operate a lumber treatment plant in Chilliwak. Attached is the project description provided by the proponent.

In accordance with the *Regulations Respecting the Coordination by Federal Authorities of Environmental Assessment Procedures and Requirements* "Regulations" please indicate by checking the appropriate box, **within 10 working days upon receipt of this notice**, whether your department:

1. **is likely** to require an environmental assessment of the project under section 5 of the *Canadian Environmental Assessment Act* (Act); ☐

   - if the answer is yes please indicate the trigger _____ and the following contact information:

     Name: _____
     Address: _____
     _____
     Telephone: _____ Facsimile: _____.
     e-mail: _____

2. **is not likely** to require an environmental assessment of the project under section 5 of the Act; ☐

3. **requires additional information** to make a determination referred to in (a) or (b) above. ☐

   - where a federal authority determines that additional information is required, it shall request that information within 10 days after making the determination;

4. **is in possession of specialist or expert information** or knowledge that is necessary to conduct the environmental assessment of the project. ☐

All departments or agencies are requested to sign the signature block and date below and fax the response to this office within the time frame specified.

signature of department responder print name

title of responder date

SAMPLE LETTER No. 2

An FA has determined that it is an RA and is requesting information (under s. 5 of the Regulations) from other FAs of their interest in the project

TO: Distribution

FROM: Department of Fisheries & Oceans (DFO)

DATE: June 1997

RE: *Canadian Environmental Assessment Act* Review of Bridge replacement over Little Bend Creek, a Tibutary to Stubb Lake in the Chako Reservoir

This project requires that the stream be re-aligned, however, the proposal provides for habitat compensation measures that satisfy DFO's "No Net Loss" policy objective. As the re-alignment of the stream constitutes harmful alteration of fish habitat, DFO has concluded that a *Fisheries Act* authorization will be required for these works which triggers a review under CEAA.

DFO has determined that it must exercise one of the powers, duties or functions prescribed under Section 5 of the CEAA and is therefore a Responsible Authority (RA) for the proposed project. DFO has also determined that the appropriate level of environmental assessment is a screening.

We request that you inform this office **within 30 working days upon receipt of this notice** if your department or agency (as required by the Federal Coordination Regulations):

1. has now, or anticipates identifying on the basis of information supplied to date, a responsibility under section 5 of CEAA to assess the environmental effects of the project (i.e. is there a trigger).

   yes ( ) no ( )

2. can provide specialist advice with respect to an environmental assessment of the proposed project pursuant to section 12(3) of CEAA to a responsible authority

   yes ( ) no ( )

3. will provide DFO with technical or scientific advice and/or comments on the issues raised by this project, based on the information supplied to date (please provide details including other federal legislative and/or policy requirements)

   yes ( ) no ( )

4. does not have sufficient information to enable you to identify any concerns related to your mandate. Please clearly identify additional requirements below.

   yes ( ) no ( )

   Additional requirements: _____

   _____

   _____

   _____

   _____

   _____

All departments or agencies are requested to sign the signature block and date below and fax the response to this office within the time frame specified.

_____

signature of department responder print name

_____

title of responder date

APPENDIX 6

"LEAD RA", EXCERPT FROM *PROCESS ADVICE FOR THE PARTICIPATION OF FEDERAL AUTHORITIES IN AN ENVIRONMENTAL ASSESSMENT*

Lead RA

5.1 Selecting the Lead RA

All involved RAs need to decide whether or a not lead RA is needed for an EA (i.e. that the lead RA responsibilities will not be shared collectively). If it is decided to select a lead RA, RAs may use any model or system for making that determination. This reference guide offers two possible models for consideration by RAs, the committee model and the hierarchical model.

If requested, the Agency will provide guidance on lead RA selection on a case-by-case basis.

Committee Model
Under this model the various roles and responsibilities of a lead RA are assumed by a working committee of involved RAs. Tasks would be coordinated and assigned by the committee.

Guidance for the establishment and operation of the committee can be provided by the Agency on a case-by-case basis.

Hierarchical Model
Under this model, the lead RA responsibilities are assigned to the department with the "greatest interest" in the project.

This determination can be made using the following series of dependencies and factors:

- If the project proponent (under S. 5(1)(a) is an RA, then that RA is the lead.
- If there are no proponent RAs, but only RAs which are: proposing to make a financial contribution under section 5(1)(b), a land contribution under section (1)(c), or take a regulatory decision under section 5(1)(d) or section 5(2) the lead may be determined based on the following factors (listed in describing order of importance).

1) <u>Magnitude of involvement</u>

A financial or land contribution to a project may be weighed against a regulatory trigger. For example, a financial contribution to the project of less than $50,000, or a land contribution of less than 10h in area is considered insignificant in comparison to involvement in the project through a Law List entry. The importance of potential issues to the public coupled with the RAs mandate may also be used to determine the magnitude of a RAs involvement in a project.

2) Duration of involvement

Those RAs that are required to be involved in several phases of a project, or have continuing financial, land management, regulatory or monitoring requirements are considered to be involved in a project for a longer duration. Those RAs with the longest duration of involvement in a project may be better suited to the role of Lead RA than those of short duration.

3) Sequence of involvement

A federal authority that is involved early in project planning may take the lead before one that is involved only at a later date.

If, after applying the above factors, there remains a disagreement as to the Lead RA for two or more RAs triggered under section 5(1)(d) or section 5(2), the Lead RA may be determined using the following hierarchy:

- for a project occurring in a National Park or Historic Site or for a project likely to affect a National Park or National Historic Site, Canadian Heritage is the lead;
- for projects which involve the mining, processing or use of radioisotopes, the Atomic Energy Control Board (AECB) is the lead;
- for projects involving oil and gas exploration, pipeline and linear electrical projects for which it has jurisdiction, the National Energy Board (NEB) is the lead;
- for projects involving railway infrastructure for which it has jurisdiction, the Canadian Transportation Agency is the lead;
- for projects north of 60 degrees latitude, Indian and Northern Affairs Canada is the lead;
- for projects involving railways or the operation or sonic or supersonic air flights Transport Canada is the lead;
- for projects requiring an ocean dumping permit under the Canadian Environmental Protection Act, Environment Canada is the lead;
- for projects on navigable waters, Department of Fisheries and Oceans (Coast Guard) is the lead unless *International Rivers Improvement* (IRIA) permit is required, in which case Environment Canada is the lead;

- for projects which potentially impact on fish or fish habitat Fisheries and Oceans Canada is lead; and

- for all other projects with more than one Section 5(1) or Section 5(2) trigger the factors described in Schedule 1 should be used to determine Lead RA among these triggers.

5.2 Roles and Responsibilities

The Lead RA is expected to coordinate and facilitate the management and completion of the EA. In addition to the roles and responsibilities outlined in Table I and Table II, the lead RA also plays a key role in the following areas:

Harmonization of EAs

The Lead RA should consult with the Agency or refer to the harmonization section of EA agreements with other jurisdictions or land claims to determine Lead RA responsibilities for such items as notification, sharing of information, and participation in the EA.

Specialist and Expert Advice

The Lead RA should ensure that other federal authorities are consulted early in the EA process, particularly those that may possess specialist or expert information or knowledge for a project. Time frames for providing the information should be discussed with the Lead RA at the time of the request.

The Lead RA can assist and specialist departments in better defining what information is being requested through scoping exercises.

Scoping the Assessment

Each RA has the duty to make a determination of its own with respect to scope of the project and scope of the assessment. The Lead RA should consider the differences in scope of project and scope of the factors to be considered by each RA when determining the assessment duties and functions to be completed by the RAs and seek agreement from all RAs with respect to scoping issues.

Need for Dispute Resolution Among RAs and Timely Issuance of Decision Reports

The Lead RA is responsible for ensuring that each RA's issues are resolved before a determination is made with respect to the course of action for an EA. If issues originate with the supply of information from a proponent, then every effort should be made to

accommodate the proponent's time needs to enable it to address the issue. However, if the EA is being unduly delayed by one RA's action, then the Lead RA may contact the Agency for assistance.

> Existing dispute resolution mechanisms between departments should be utilized to their fullest extent. The Agency will arrange mediation services for RAs with outstanding concerns if requested. If all parties to the dispute to mediation, then in consultation with the affected parties, the Agency will mediate, or appoint a mediator, to assist in resolving the dispute.

The Lead RA does not:

- have specific decision making authority with respect to Section 20, 25 or 37 of the Act beyond that provided to any other RA for the project;
- assume responsibility for coordinating the implementation of the mitigative measures beyond that required to fulfill its own legislative responsibilities;
- assume any monitoring role for follow-up program development and implementation beyond that required to fulfill its own legislative responsibilities;
- assume responsibility for ensuring that appropriate mitigation measures or follow-up program are implemented beyond that required to fulfill its own legislative responsibilities; and

The responsibility for implementation of mitigation and follow-up programs remain with each RA taking a course of action pursuant to section 5 of the Act.